IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE THOTTATHIL B.RADHAKRISHNAN

WEDNESDAY, THE 27TH JUNE 2007 / 6TH ASHADHA 1929

OP.No. 30863 of 2001(Y)

PETITIONERS:

1. **R.V.MOHANAN, XXX/3891-B, VENKIT TOWERS, M.G.ROAD, ERNAKULAM, COCHIN – 16.**
2. **R.V.NARAYAN, SANKAR NAGAR, KANNADI KADU, NEAR NAIRS HOSPITAL, MARADU.**
3. **E.V.SUBRAMANIAN, SANKAR NAGAR, KANNADI KADU, NEAR NAIR HOSPITAL, MARADU.**
4. **R.V.MAHADEVAN, IV/16, AYININADAPPAD, NEAR B.T.C.JUNCTION, MARADU.**
5. **R.V.RADHAKRISHNAN, IV/16, AYININADAPPAD, NEAR B.T.C. JUNCTION, MARADU.**
6. **S.SAMPPORNA AMMAL, IV/16, AYININADAPPAD, NEAR B.T.C. JUNCTION, MARADU.**

BY ADV. SRI.R.HARIKRISHNAN
SRI.C.A.RAJEEV
SMT.A.SINDHULAKSHMY

RESPONDENTS:

1. **STATE OF KERALA, REPRESENTED BY SECRETARY TO GOVERNMENT, TAXES AND FINANCE, TRIVANDRUM.**
2. **THE DISTRICT COLLECTOR, ERNAKULAM.**

BY GOVERNMENT PLEADER SRI. MATHEW GEORGE VADAKKAL

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 27/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER ON C.M.P.NO.50253/2001 IN O.P.NO.30863/2001 Y

DISMISSED

27/06/2007 **SD/- THOTTATHIL B.RADHAKRISHNAN, JUDGE**

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1:	**COPY OF THE AGREEMENT DTD. 27/06/1991 EXECUTED BY THE PETITIONERS.**
EXT.P2:	**COPY OF THE PROPERTY TAX RECEIPT DTD. 19/03/1999 OF THE CORPORATION OF COCHIN TO THE 3RD PETITIONER.**
EXT.P2(A):	**COPY OF THE PROPERTY TAX RECEIPT DTD. 1/07/1999 OF THE CORPORATION OF COCHIN TO THE 4TH PETITIONER.**
EXT.P2(B):	**COPY OF THE PROPERTY TAX RECEIPT DTD. 1/07/1999 OF THE CORPORATION OF COCHIN TO THE 6TH PETITIONER.**
EXT.P2(C):	**COPY OF THE PROPERTY TAX RECEIPT DTD. 1/07/1999 OF THE CORPORATION OF COCHIN TO THE 5TH PETITIONER.**
EXT.P2(D):	**COPY OF THE PROPERTY TAX RECEIPT DTD. 7/12/96 OF THE CORPORATION OF COCHIN TO THE 1ST PETITIONER.**
EXT.P3:	**COPY OF ASSESSMENT ORDER DTD. 1/02/99 OF THE ASSESSING AUTHORITY.**
EXT.P4:	**COPY OF THE PROCEEDING OF THE R.D.O. DTD. 3/07/99 OF THE APPELLATE AUTHORITY.**
EXT.P5:	**COPY OF THE REVISION MEMORANDUM DTD. 09/08/1999 FILED BEFORE THE 2ND RESPONDENT.**
EXT.P6:	**COPY OF PROCEEDING DATED 10/04/2001 OF THE 2ND RESPONDENT NO.46625/99/B10/K.DIS.**

/TRUE COPY/

KSS

Thottathil B. Radhakrishnan, J.

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O.P.No.30863 of 2001

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Dated this the 27th day of June, 2007.

JUDGMENT

Petitioners contend that they are co-owners of an item of property on which they constructed a building by jointly investing for such construction and accordingly are liable to pay tax in terms of the Kerala Building Tax Act, 1975, hereinafter referred to as the "Act" by treating each of the apartments as separate units. But, the consideration of such an assessment can only be on the filing of returns as enjoined by the Act. It is the admitted case that the petitioners did not file any return. There is no plea in the writ petition that any return was filed. Under such circumstances, there is no lack of jurisdiction for the Tahsildar to have made an ex-parte assessment order based on best of judgment and by imposing penalty. The appellate authority and the revisional authority, before whom certain documents were admitted to be placed, did not consider them because they found that the petitioners were not entitled to any leniency

for not having filed returns and co-operated with the Tahsildar for finalizing the assessment by placing the necessary materials.

2. At the stage of admission, following the order on CMP No.50253 of 2001, petitioners were to remit an amount of Rs.61,000/- (sixty one thousand), within a period of one month therefrom.

3. Having heard the learned counsel for the parties, since the case of the petitioners is that they are co-owners of the property and that they had invested funds jointly on the basis of Ext.P1 agreement, I deem it necessary to secure the ends of justice by granting an opportunity to the petitioners to place details before the Tahsildar in support of their claim. To aid such procedure, the impugned assessment orders and the revisional orders are set aside and the Tahsildar is directed to give an opportunity of hearing to the petitioners, provided, they produce all the relevant materials within an outer limit of 45 days from the date of receipt of a copy of

this judgment. The Tahsildar shall, in such event, dispose of the matter finally, within an outer limit of 45 days from the date of receipt of the documents as aforesaid and a copy of this judgment, whichever is later. The remittance, if any made by the petitioner, on the basis of the interim order dated 16-10-2001 on CMP No.50253 of 2001, will be given credit to against the building tax that may be found due. The re-opening of the case, on the basis of this judgment, is merely because of the failure of the petitioners to file returns and place materials before the Tahsildar. Accordingly, this judgment is made conditional on the petitioners remitting an amount of Rs.10,000/- (ten thousand) as costs within a period of three weeks from now to the satisfaction of the Tahsildar, Kanayannur taluk. Such amount is not to be credited as against the building tax that may be found due.

Writ petition is disposed of in the above terms.

Thottathil B.Radhakrishnan,
sl. **Judge.**

Thottathil B. Radhakrishnan, J.

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O.P.No.30863 of 2001
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JUDGMENT

Dated:27-6-2007